

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SALLY SAPATA

Claimant

VS.

SOUTHWESTERN BELL TELEPHONE COMPANY

Respondent

Self-Insured

)
)
)
)
)
)
)

Docket No. 133,971

ORDER

Respondent appealed an Order entered by Assistant Director Brad E. Avery dated March 25, 1996 that appointed Dr. Peter Bieri of Lawrence, Kansas, to provide an independent medical examination of the claimant.

ISSUES

In its Application for Review, respondent raised the following issues:

- "1. Whether Special ALJ and Assistant Director Brad Avery could issue the March 25, 1996 Order, post submission, for independent medical examination of Claimant pursuant to K.S.A. 44-528(a). [Attached]
- "2. Did the ALJ exceed his authority in violation of K.S.A. 44-523(c). K.S.A. 44-551(2)(A)."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant filed an Application for Review and Modification with Prayer for Attorneys Fees on February 23, 1993 seeking to modify the Memorandum Decision and Order entered in this case by District Court Judge Terry Bullock dated January 18, 1991. The Review and Modification case was submitted by the parties to the Administrative Law Judge for decision on June 8, 1995.

In a letter dated March 1, 1996, the claimant requested the Director to reassign the Review and Modification case to an assistant director or a special administrative law judge for decision pursuant to K.S.A. 44-523(c). The Director, on March 25, 1996, transferred the case to Assistant Director Brad E. Avery for final decision.

After receipt of the file, Assistant Director Avery entered the Order that is the subject of this appeal, appointing Dr. Peter Bieri of Lawrence, Kansas, to provide an independent medical examination disability evaluation of claimant. From that Order, the respondent appealed and asserted that K.S.A. 44-523(c) required the Assistant Director, after he was assigned the case, to enter an award, forthwith, based on evidence in the record. The respondent argued that the record in this case was closed when the case was submitted for decision to the Administrative Law Judge. Therefore, the respondent argued that the Assistant Director cannot now re-open the record for additional evidence, such as, the results of an independent medical examination. Conversely, the claimant takes the position that the appeal should be dismissed as the Appeals Board does not have jurisdiction to review the Order of Assistant Director Brad Avery.

The initial issue that the Appeals Board will address in this case is whether the Appeals Board has jurisdiction to review the independent medical examination Order of the Assistant Director. After reviewing the briefs of the parties, the Appeals Board finds and concludes that it does not have jurisdiction to review this particular matter at this juncture of the proceedings.

The decision of the Assistant Director to appoint a physician to provide an independent medical examination is interlocutory in nature and made during the litigation of a workers compensation case that is before the Assistant Director. This is not a final order that can be reviewed pursuant to K.S.A. 44-551, as amended by S.B. 649 (1996). Neither is this an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as amended by S.B. 649 (1996), as preliminary hearing orders are limited to issues of furnishing of medical treatment and payment of temporary total disability compensation. The Order now before the Appeals Board pertains to an interlocutory matter, ordering an independent medical examination, over which an Assistant Director, appointed pursuant to K.S.A. 44-523(c) to decide the case, has authority to order during the litigation of a workers compensation case.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Application for Review filed by the respondent is dismissed as the Appeals Board lacks jurisdiction to review the Order of Assistant Director Brad E. Avery that ordered an independent medical examination of the claimant.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Michael C. Cavell, Topeka, KS

SALLY SAPATA

3

DOCKET NO. 133,971

Brad E. Avery, Assistant Director
Philip S. Harness, Director